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METHODS OF OBTAINING CONFESSIONS AND INFORMATION FROM PERSONS ACCUSED OF CRIME

PRESENTED AT

THE FIFTY-FIRST CONGRESS

of the

AMERICAN PRISON ASSOCIATION

JACKSONVILLE, FLORIDA, 1921

By

B. OGDEN CHISOLM

AND

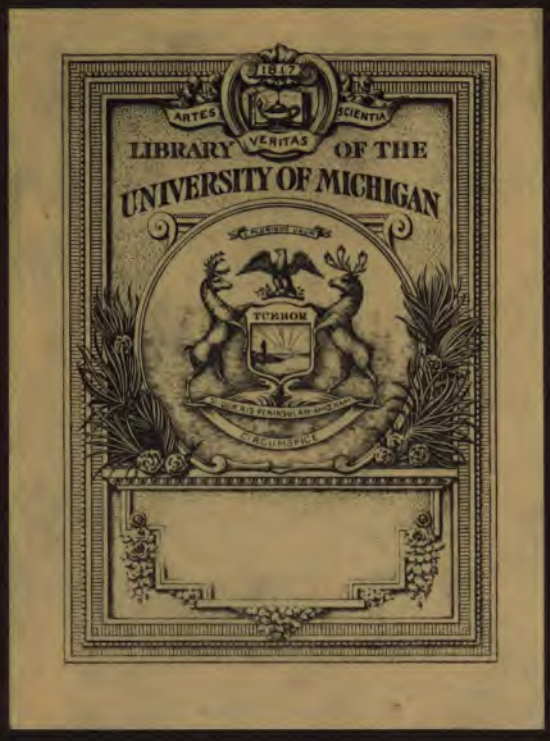
HASTINGS H. HART

NEW YORK

RUSSELL SAGE FOUNDATION

NEW YORK CITY

Price 10 Cents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METHODS OF OBTAINING CONFESSIONS AND INFORMATION FROM PERSONS ACCUSED OF CRIME

By B. OGDEN CHISOLM AND HASTINGS H. HART
Of New York City

The practice commonly known as the "Third Degree" has long been used as a means of obtaining information from persons under suspicion of crime.

The belief that abuses exist in the use of this method prevails widely throughout the United States and it is fostered by numerous cases reported in the public press.

An eminent Chicago lawyer recently described this practice as follows: "The 'third degree' is a popular phrase, meaning a superlative degree of pressure applied to accused persons and persons detained as witnesses to compel them to confess or to give evidence such as the prosecutor desires—whether true or not."

The Supreme Court of Tennessee made judicial declaration of the existence of such abuses in the case of McGlothlin vs. State, 42 Tenn., as follows:

> Evidence of confessions is liable to a thousand abuses. They are generally made by persons under arrest, in great agitation and distress, when every ray of hope is eagerly caught at, and frequently under the delusion, though not expressed, that the merits of a disclosure will be productive of personal safety—in want of advisers, deserted by the world, in chains and degradation, their spirits sunk, fear predominant, hope fluttering around, purposes and views momentarily changing, a thousand plans alternating, a soul tortured with anguish, and difficulties gathering into a multitude. How uncertain must be the things which are uttered in such a storm of passion.

In this case the court adopted the rule laid down in the case of Deathridge vs. State, 31 Tenn.:

If a confession be free and voluntary; if it appear to proceed merely from a sense of guilt, and not from the influence of hope or fear in any degree, it is competent. But if the confession be the result of hope or fear, induced or excited by a person having power over the prisoner, it becomes incompetent.

It is the general practice throughout the United States for police officers or prosecuting attorneys (usually the former), immediately upon the arrest of a suspect and before the formal inquiry of a magistrate, to undertake an informal investigation for the purpose of procuring a confession of crime or such information as will make it possible to secure a conviction.

There are three possible sources of information with reference to such investigations: the public press, which frequently publishes what purport to be accounts of the practice of the third degree; individuals who have been subjected to such examinations, and public officers—prosecuting attorneys, chiefs of police, and detectives who are accustomed to conduct these preliminary investigations.

On careful consideration, however, it appeared that the most promising source of information would be the sworn officers of the law who are accustomed to conduct such investigations. Accordingly, a questionnaire was prepared and was sent out to the prosecuting attorney and the chief of police in each of 100 of the larger cities of the United States. Sixty-six replies were received from 28 district or prosecuting attorneys and 38 chiefs of police, covering 51 cities in 27 states.

Answers to inquiries addressed to prosecuting attorneys were received from the following named cities:

Boston	Kansas City, Mo.	St. Joseph, Mo.
Charleston, S. C.	Memphis	St. Louis
Dallas	Nashville	St. Paul
Denver	New Bedford	Salt Lake City
Detroit	New Orleans	Schenectady
Duluth	Peoria	Spokane
Evansville, Ind.	Pittsburgh	Springfield, Mass.
Grand Rapids	Providence	Tacoma
Harrisburg	Rochester	Worcester
Houston		

Answers to inquiries addressed to chiefs of police were received from the following named cities:

Albany	Grand Rapids	Providence
Atlanta	Harrisburg	Rochester
Baltimore	Indianapolis	St. Louis
Boston	Kansas City, Mo.	Salt Lake
Buffalo	Louisville	San Antonio
Charleston, S. C.	Lowell	Savannah
Cleveland	Manchester, N. H.	Schenectady
Columbus	Minneapolis	Springfield, Mass.
Dayton	New Bedford	Trenton
Des Moines	Norfolk	Washington
Detroit	Paterson, N. J.	Waterbury
Fall River	Portland, Oregon	Worcester
Fort Wayne		

The Questionnaires

The two questionnaires sent out included the following questions:

1. By whom should such preliminary inquiries be conducted: the prosecuting attorney's office or the police department?
2. Have you any law regulating such preliminary inquiries?
3. (To prosecuting attorneys only.) If no law, should there be one?
4. Is it customary to advise the prisoner as to his rights and the use which may be made of his statements?
5. How far is it proper to promise immunity or leniency?
6. How far is it proper to go in "grilling" and cross-questioning?
7. Is it advisable to seek such information by threats or physical suffering?
8. (To prosecuting attorneys only.) Is the principle of law that the accused may not be compelled to testify against himself applicable to these preliminary inquiries?

In considering the 66 replies to these questions, for the purposes of this study we shall accept each one of them exactly at its face value. We shall assume that all of the 66 writers have replied in perfect good faith and that their statements of fact are in strict accordance with the truth. As the replies to the questionnaires were entirely voluntary and no one of these officers could be expected to testify against himself, when these 66 officers, almost without exception, declared that they neither inflict nor tolerate any physical suffering we shall accept those statements with the inference that if any of those to whom the inquiry was addressed do indulge in such practices, they are numbered among the 134 who refrain from making any reply.

When it comes to the question of mental and nervous suffering, there is sufficient evidence in the replies received that the inflic-

tion of such suffering is a very common practice and that it is defended by many of our correspondents.

In discussing answers to the questionnaires, we shall not adhere to the original order of the questions.

THE LEGAL STATUS OF THE THIRD DEGREE

Laws and Police Regulations

From the reports of the prosecuting attorneys it appears that in most of the states from which the reports come there are court decisions like that already quoted in the case of Deathridge vs. State, 31 Tenn., declaring that confessions extorted by compulsion, fear, torture, or promises of immunity are incompetent as evidence against accused persons. Except for this restriction there is no law regulating the informal preliminary examination of suspects by prosecuting attorneys or police authorities except in the five states of South Carolina, Indiana, Missouri, Rhode Island, and Texas.

While confessions extorted by duress are rejected by the courts generally, there appears to be nothing in most of the states reported to prevent obtaining information from accused persons by duress with reference to other witnesses or other evidence which may be used against them.

In seven cities—Atlanta, Boston, Cleveland, Columbus, Norfolk, Portland, Oregon, and San Antonio—the conduct of such examinations is regulated by a rule of the police department. These laws and regulations cover 14 cities, but in the remaining 37 cities from which reports were received this proceeding is not controlled by either law or police ordinance. The examinations are conducted in some cities by the chief of police or his deputy; in others by the chief of detectives or his deputy; but in many cases the individual policeman or plain clothes man who makes the arrest conducts the examination in his own way, without restriction. Under these circumstances abuses must occur and undoubtedly do occur.

Need of Additional Legislation

The prosecuting attorneys were asked: If there is no law in your state, should there be one? Out of 28 replies received, only five declared in favor of such legislation; namely, the prosecuting

attorneys in Charleston, S. C.; Evansville, Ind.; Kansas City, Mo.; Springfield and Worcester, Mass.

We quote the following replies from those who oppose legislation:

The district attorney of Boston says: "I see no reason for having any law regarding this matter."

The county attorney in Duluth writes:

In my experience this matter of examinations by public officials has not been abused, and as long as that is true, I do not believe that there should be any statutory regulation thereof.

Massachusetts has no such law, and the district attorney in New Bedford writes:

I am unalterably opposed to the passage of any new law regulating the action of police officers in efforts to obtain confessions.

The district attorney in Rochester writes:

I positively do not think it should be regulated unless the provision of law would be one compelling defendants and all others who know about a crime to tell what they know.

The district attorney in Schenectady writes:

There are too many laws now which handicap and prevent the proper prosecution of persons who are guilty.

The prosecuting attorney in Spokane says: "Such laws would impair very greatly the disclosure of crime."

May the Accused Be Compelled to Incriminate Himself?

The prosecuting attorneys were asked: "Is the principle of law that an accused person may not be compelled to testify against himself applicable in these preliminary inquiries?"

Out of 28 attorneys replying, one did not answer the question; 20 replied that the principle does apply in such examinations; and seven replied that in their opinion it does not apply. These seven were from the cities of Boston, Duluth, Harrisburg, Kansas City, Mo., New Bedford, Rochester, and Salt Lake City.

The district attorney in Boston writes:

The principle of the law that a prisoner cannot be compelled to testify against himself is not applicable to preliminary inquiries in my opinion. It is simply applicable to statements under oath

in the presence of the court and in the course of trial where a man is in jeopardy.

The county attorney in Duluth writes:

It has been held in this state that the principle of law to which you allude does not apply to the preliminary examination.

The prosecuting attorney in Kansas City, Mo., writes:

It is an elementary principle of law that an accused person may not be compelled to testify against himself. We do not believe, however, that this rule is applicable to preliminary inquiries. If that procedure should be adopted, then in many instances it would be absolutely impossible to fix liability for crime.

The district attorney in New Bedford writes:

It is my opinion that the principle of law that an accused person may not be compelled to testify against himself is not applicable to preliminary inquiries . . . I am strongly of the opinion that the administration of our criminal law would entirely break down and criminals could ply their "professions" undisturbed if the officers charged with these preliminary investigations were hampered by laws regulating their conduct. . .

The district attorney of Rochester writes:

It is not [applicable], and if your committee feels that it can accomplish anything by legislation my only suggestion . . . would be legislation compelling every person who knows any fact concerning the commission of a crime against the peace of the people of the state to divulge it.

On the other hand, the associate prosecuting attorney in St. Louis writes:

This should apply to all preliminary inquiries, but in a great many cases it is not followed.

And the district attorney in Springfield, Mass., writes:

The principle stated is applicable, but of course the police pay little or no attention to it.

The Foregoing Opinions Important

It appears to a layman to be a matter of great significance and grave concern that seven prominent prosecuting attorneys out of 28 should declare emphatically their official opinion that the principle of law that an accused person may not be compelled to

testify against himself does not apply to informal preliminary investigations by police officers and detectives. The grave significance of these opinions appears when we turn the statement about. It means that an accused person may be compelled to testify against himself in an inquiry where he is left without counsel and without the protection of the law.

Is the Accused Advised as to His Rights?

We asked both prosecuting attorneys and chiefs of police: "Is it customary to advise the prisoner as to his rights and the use which may be made of his statements?"

Replies were received from 21 prosecuting attorneys and 30 chiefs of police, total 51. Seventeen prosecuting attorneys and 24 chiefs of police reported that it was their regular practice so to advise the prisoner; three prosecuting attorneys and five chiefs of police reported that it was usually done. One attorney only, the county attorney in Duluth, stated that it was not done. He writes:

> In the state of Minnesota it is not necessary to inform the prisoner as to his rights, nor the use to be made of the information; therefore no such statements are made to him.

One chief of police, the superintendent of police at Grand Rapids, stated that it was not done. He writes:

> We do not always state to a man that what he is saying might be used against him, for no man can get the results that he should by first putting him on his guard.

The chief of police in Cleveland writes:

> Every member of this department is instructed and trained that before questioning a prisoner he must make plain . . . what crime he is suspected of . . .; for instance, he may say: "You are suspected of being implicated in the murder of John Doe and anything you say will in all probability be used against you at the trial. I would like to have you make a truthful statement, but it must be voluntary and you need not answer any questions unless you see fit."

The chief of police in Columbus writes:

> We invariably request any person undergoing investigation to make a clean statement as to the facts . . . assuring him that he is under no compulsion to speak. . . If the prisoner is

represented by counsel, his attorney is privileged to be present . . . and no one under arrest, regardless of the charge, is denied the right of counsel prior to the time set for our investigation.

The chief of police in Paterson, N. J., sends the following printed heading which is attached to statements made by accused persons:

POLICE DEPARTMENT, PATERSON, NEW JERSEY

STATE OF NEW JERSEY, Passaic County..... 19..
People State of New Jersey against.....charged with .....The following is a statement made by..... in the presence of.....

This statement was made after the defendant, having been warned of ..... rights that whatever ..... said might be used against ..... in the event of the case going to trial, and that if ..... did not wish to make a statement ..... did not have to and that ..... makes this statement of ..... own free will.

Application of Physical Suffering

The question was asked of both prosecuting attorneys and chiefs of police how far it is proper to go in the infliction of physical suffering. Out of 38 chiefs of police 36 denied emphatically the infliction of any physical suffering. One failed to reply, and one replied concisely: "Governed by circumstances."

Out of the 28 prosecuting attorneys, one made no answer, and 24 expressed positive disapproval. Only three admitted the propriety of such action under any circumstances.

The prosecuting attorney in Kansas City writes:

In case one is convinced that the accused is withholding information necessary to connect and discover the facts, then, in my opinion, threats, deprivation of food and sleep, and in fact anything short of absolute physical torture is justified. The "rule of reason" should be applied, however, in order that injustice may not be done to an innocent man.

The district attorney in Schenectady writes:

No rule can be laid down which could be applicable to all cases. No person should be grilled so far that his answer is involuntary.

The city prosecuting attorney in Springfield, Mass., writes:

I think that such means should be employed only in very rare instances and that the rule should be against it.

Opposition to Physical Suffering

The district attorney in Boston writes:

It is absolutely unpardonable and un-American to resort to any threats or physical violence of any kind or nature. We have long since passed the rack and test of the olden days to wrench from the lips of the prisoner some statement favorable to the government, truthful or otherwise.

The solicitor of the Ninth Judicial Circuit in Charleston, S. C., writes:

The law does not contemplate any such action . . . nor do I believe there is a solicitor in South Carolina who would for one moment stand for such performances.

The prosecuting attorney at Houston writes:

I never commit violence to any prisoner . . . in order to secure a confession; however he may be kept from sleep for as much as 15 hours at one time.

The district attorney in New Orleans writes:

The constitution of Louisiana provides that no person under arrest shall be subjected to any treatment by effect on body or mind to compel confession.

The chief of police in Charleston, S. C., writes:

There is no justification for such barbarism; it does not belong in this age. . . It is questionable whether such statements, extracted by such methods, would contain facts.

The chief of police in Cleveland writes:

The policy and rules . . . of our department strictly prohibit the infliction of any physical punishment on any person in our custody.

The chief of police in Columbus writes:

At no time is any prisoner subjected to any physical punishment or suffering. . . The writer is a firm believer that every prisoner is innocent until proven guilty, and that he has certain inalienable rights as a citizen that must be respected by law enforcement officers. . . Our present methods are meeting with a far greater measure of success than was ever secured by following the old-time police customs.

The chief of police in Springfield, Mass., writes:

I don't think it is necessary to inflict physical suffering on any prisoner whatever by police officers; on the other hand, I don't believe that any prisoner in any city or town in the United States is abused one time in fifty when they say they are.

"Grilling" and Cross-Questioning

The question was asked of prosecutors and chiefs of police: "How far is it advisable to go in the matter of 'grilling' and cross-questioning the accused person?"

Those of you who have undergone a rigid cross-questioning by a shrewd attorney, in open court, protected by your own attorney and the judge on the bench, have realized how exceedingly bitter and even cruel such an examination can be made. Imagine then what it must be to endure a grilling persistently continued for many hours—sometimes for days and nights, ignorant of one's rights and privileges, and deprived of the protection of judge and attorney. It should be borne in mind that this harsh experience is sometimes and perhaps often visited upon accused persons who prove to be absolutely innocent.

There is a marked and surprising difference between the replies received with reference to the infliction of physical suffering and with reference to the infliction of this kind of mental suffering. While 36 out of 38 police officers denied and condemned the infliction of physical suffering, and 24 out of 27 prosecuting attorneys expressed positive disapproval of it, on the other hand, 36 out of 65 replies favored severe grilling and cross-questioning under some circumstances, and 14 approved of grilling as long as might be necessary to get the truth.

The following statement indicates the tenor of the 65 replies received to this question:

	Prosecuting attorneys	Chiefs of police	Totals
Grill as long as necessary to get the truth	6	8	14
Some reply (with cautionary instructions)	5	4	9
Practice to depend on circumstances, as judged by examining officer	5	8	13
Total who favor severe grilling under some circumstances	16	20	36
Opposed to severe grilling	5	10	15
Opposed to all grilling	4	10	14
Total opposition	9	20	29
Grand total replies	25	40	65

We quote the following extracts from replies of prosecuting attorneys who approve of severe cross-questioning in such preliminary inquiries:

The prosecuting attorney in Detroit writes:

It is proper to go to any extent in questioning or grilling a prisoner so long as such methods do not bring forth untrue statements. . . The moment it becomes . . . apparently more advantageous for him to make an untrue statement, contrary to his own interests, than to submit to further questioning or grilling, at that time, and not until then, has the proper scope of such methods been exceeded.

The prosecuting attorney in Grand Rapids writes:

We never resort to any "raw methods" . . . we question insistently . . . when we know from other sources that we are on the right track. We . . . bring him into the office of the chief of police or my office and make him feel perfectly at ease, the idea being to show him that we are not "grilling" him, but that we have the information and wish him to come clean in the interests of justice.

The city prosecuting attorney in Springfield, Mass., writes:

I think that the lengths to which one may properly go in grilling, that is in cross-examination, should be almost unlimited, that is, a proper examination.

The chief of police in Rochester writes:

It is advisable to use all means possible without promises, violence or threats.

On the other hand, the secretary of the police department in Boston quotes as follows from the rules of the police department:

In the examination of prisoners by question or otherwise for the purpose of obtaining confession or information, no police officer shall infringe upon the legal rights, nor shall he subject them to any pressure or procedure of which he would be unwilling to inform a court engaged in a hearing of the case.

THE THIRD DEGREE IN COLUMBUS

The reply to our questionnaire of H. E. French, Chief of Police of Columbus, seems to express pretty nearly the ideal method of conducting preliminary examinations and appears to be worthy of quotation at length. He says:

"1. I am not aware of any state law or city ordinance regulating such inquiries but departmental regulation provides that the